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Jan 22, 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

The State of Ohio, Plaintiff, vs. The Chattanooga Boiler and Tank Company, a Tennessee Corporation, Chattanooga, Tennessee, Defendant.	}	No. 18 Orig^l Original At Law.

MOTION FOR LEAVE TO FILE PETITION, PETITION, AGREED STATEMENT OF FACTS.

By GILBERT BETTMAN,
Attorney General,
OSCAR A. BROWN,
Assistant Attorney General,
Counsel for Plaintiff.

ARNOLD, WRIGHT, PURPUS & HARLOR,
Counsel for Defendant.

FRANCIS J. WRIGHT,
Of Counsel.

TOOF, BAKER & RODENFELS, Law Printers, Columbus, Ohio.

INDEX.

Motion for leave to file petition 1
Notice of hearing 2
Proof of service 2
Brief on motion for leave to file petition 3
Petition 4
Waiver of process 9
Appendix A—Constitution of Ohio 10
Appendix B—Agreed statement of facts 15
Appendix C—Finding of facts and order to employer 20

IN THE

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The State of Ohio, Plaintiff, vs. The Chattanooga Boiler and Tank Company, a Tennessee Corporation, Chattanooga, Tennessee, Defendant.	No. ..... Original At Law.

MOTION FOR LEAVE TO FILE PETITION.

Now comes the plaintiff, the State of Ohio, by its Attorney General Gilbert Bettman, and presents herewith its petition in the above entitled cause and respectfully moves this court for leave to file the same in this court under its original jurisdiction.

The State of Ohio,
By GILBERT BETTMAN,
Attorney General,
OSCAR A. BROWN,
Assistant Attorney General,
Counsel for Plaintiff.

NOTICE OF HEARING.

Please take notice that on the fourth day of January, 1932, or as soon thereafter as counsel can be heard, the motion of the plaintiff for leave to file its petition in the above entitled cause will be submitted to the Supreme Court of the United States.

The State of Ohio,
By GILBERT BETTMAN,
Attorney General,
OSCAR A. BROWN,
Assistant Attorney General,
Counsel for Plaintiff.

Service accepted this 21st day of December, 1931.
ARNOLD, WRIGHT, PURPUS & HARLOR,
Counsel for Defendant.

PROOF OF SERVICE.

We hereby acknowledge receipt of copy of motion for leave to file petition, notice of hearing, and brief, this twenty-first day of December, 1931.

ARNOLD, WRIGHT, PURPUS & HARLOR,
Counsel for Defendant.

BRIEF ON MOTION FOR LEAVE TO FILE PETITION.

As cause for this motion it is respectfully shown:

1. That this cause involves a controversy between the state of Ohio and a citizen of another state.

2. That the state of Ohio as party plaintiff, is the real party in interest.

3. That this cause is of a justiciable character, of a civil nature, and is instituted to enforce the recovery of property due to the state of Ohio.

4. That it is not a suit to enforce a penalty under the state law and the nature of the controversy does not call for a judgment on a political or governmental question.

5. That no service of process can be had within the state of Ohio upon the said defendant corporation or any of its officers or agents.

6. That the policy of the state of Tennessee, the residence of the defendant, regarding the subject matter in controversy, as enunciated by its statutes and by its Supreme Court, is in conflict with the rights of the state of Ohio involved in the present suit.

Wherefore, the plaintiff prays that this Honorable Court may exercise its original jurisdiction in this controversy as provided in the Judicial Code, Section 233 (28 U. S. C. A., 341).

The State of Ohio,
By GILBERT BETTMAN,
Attorney General,
OSCAR A. BROWN,
Assistant Attorney General,
Counsel for Plaintiff.

PETITION.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of the state of Ohio, one of the United States of America, respectfully shows this Honorable Court that:

1. The state of Ohio is one of the United States of America and that this action is brought on its behalf pursuant to the written request made on the attorney general of Ohio by the Industrial Commission of Ohio, a duly constituted department of the state government, and that Gilbert Bettman is the duly elected, qualified and acting attorney general of the state of Ohio and that this action is brought under and by virtue of Article II, Section 35, of the Constitution of the state of Ohio and the Ohio workmen's compensation law, particularly Section 1465-74 of the General Code of Ohio. (See Appendix A.)

2. The plaintiff further shows that the defendant is a corporation organized and existing under the laws of the state of Tennessee and is a citizen thereof with its principal place of business located in the city of Chattanooga in the said state.

3. This action is brought in the Supreme Court of the United States in the exercise of the original jurisdiction of said court on the ground that it is an action at law relating to a controversy between a state and a citizen of another state of the United States.

4. Plaintiff further says that on or prior to the fifth day of May, 1928, William R. Tidwell, deceased, was in the employ of the defendant and that the defendant was engaged in the manufacture and construction of boilers and tanks in Chattanooga, Hamilton county, Tennessee, and in the erection and construction of boilers and tanks in various other states, including the state of Ohio; that the defendant had in its employ on and prior to the date aforesaid three (3) or more workmen or operatives regularly employed in its business; that on and prior to the aforesaid date the defendant was engaged in doing business in the state of Ohio and in the erection and installation of tanks in the city of Ironton, Lawrence county, Ohio; that on and prior to the aforesaid date the said defendant had in its employ three (3) or more workmen or operatives regularly employed in its business within the state of Ohio.

5. Plaintiff further says that the said defendant company had failed and neglected to comply with the workmen's compensation law of Ohio by becoming a subscriber to the state insurance fund or electing to pay compensation direct to the injured employes as provided in Section 22 of said act, the same being Section 1465-69 of the General Code of Ohio.

6. Plaintiff further says that on or about the fifth day of May, 1928, the deceased person, William R. Tidwell, was regularly in the employ of said defendant under a contract of hire as a rivet heater in connection with the erection and installation of certain tanks of said defendant company in Ironton, Lawrence county, Ohio; that the